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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/716,477	11/20/2003	Ram Pandit	02734-0610	6854
22852	7590	08/18/2008		
FINNEGAN, HENDERSON, FARABOW, GARRETT & DUNNER LLP 901 NEW YORK AVENUE, NW WASHINGTON, DC 20001-4413			EXAMINER JEANTY, ROMAIN	
			ART UNIT	PAPER NUMBER
			3623	
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/716,477

Applicant(s)

PANDIT, RAM

Examiner

ROMAIN JEANTY

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 11/20/2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-18 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SF/ICE)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

1. This Non-Final office action is in response to the filing of this application on November 20, 2003. Claims are pending in the application and are examined on the merits.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 13 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

As per claim 13, preamble of the claim recites the phrase "being capable of", this phrase renders the claim indefinite because it is unclear whether the limitation (s) following the phrase are part of the claimed invention. Appropriate correction is needed.

Claim Rejections - 35 USC § 101

4. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

5. Claims 1-6 and 13-18 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

Claims 1-6 are directed toward the statutory category of a process. In order for a process to be patentable subject matter under 35 U.S.C. § 101, it must either (1) be tied to another

statutory class (such as a particular apparatus), or (2) transform underlying subject matter (such as an article or materials) to a different state or thing. If neither of these requirements is met by the claim, the method/process is not patentable subject matter under § 101. Thus, to qualify as a statutory process under § 101, the claim should positively recite the other statutory class to which it is tied, or positively recite the subject matter that is being transformed.

Claims 13-18: It is not clear whether the instructions are executed by the computer which causes the a computer to perform the recited steps.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1, 3-7, 9-13, and 16-18 are rejected under 35 U.S.C. 103(a) as being unpatented over Parker (Patent No. 7,251,612) in view of Wolfe et al (U.S. Patent No. 7,212,984).

Regarding claims 1, and 5-6, 11-12, and 17-18, Parker teaches a computer-based methods for scheduling the distribution of products. In so doing, Parker teaches creating a first schematic, wherein the first schematic comprising a lane between a first accent point and a second accent point, creating a tour as an instance of the schematic, wherein the tour comprises at least a segment corresponding to the lane of the schematic (See Figure 16; col. 4, lines 21-47). Parker fails to explicitly disclose **assigning a load to the first segment of the tour. Wolfe et al**

in the same field of endeavor, discloses the concept of assigning a load to a truck to be traveled to a destination). Note col. 9, lines 35-63 of Wolfe et al. It would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify the teachings of Parker to include the teachings of Wolfe et al in order to provide virtual capacities to a provider of services.

Regarding claims 3, 9 and 15, Parker further discloses the method of claim 1, further comprising performing tour optimization on the tour (col. 1, lines 45-66).

Regarding claims 4, 10 and 16 Parker further discloses the method of claim 1, wherein creating the first schematic further comprises creating the first schematic based on a load history (col. 1, lines 24-46).

Claim 7 is substantially parallel of the system steps of claim 1; therefore claim 1 is rejected for the same aforementioned reasons.

Claim 13 is an article of manufacture containing instructions for tour planning, the instructions being executed by a computer to perform the steps of method claim 1 above; therefore claim 13 is rejected for the same aforementioned reasons indicated in claim 1 above.

6. Claims 2-3, 8 and 14 are rejected under 35 U.S.C. 103(a) as being unpatented over Parker (Patent No. 7,251,612) in view of Wolfe et al (U.S. Patent No. 7,212,984) as applied to claim 1 above and further in view of Helms (U.S. Patent No. 5,880,958)

Regarding claims 2-3, the combination of Parker and Wolfe et al fails to explicitly disclose wherein assigning the load to the first segment of the tour further comprises assigning a load to the first segment of the tour to produce a costs savings over assigning the load to a common carrier. Helms in the same field of endeavor discloses the concept of minimizing cost

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of delivering a load (col. 8, line 30 through col. 9, line 56). It would have been obvious to a person of ordinary skill in the art at the time of the applicant's invention to modify the disclosures of Parker and Wolfe et al to include the teachings of Helmes in order to optimize a net contribution per freight hauling vehicle over time.

Conclusion

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

a. Pisula WO9906934), teaches a method for graphically organizing and accessing freight transportation network information.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to ROMAIN JEANTY whose telephone number is (571)272-6732. The examiner can normally be reached on Mon-Thurs 7:30 am to 6:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Beth Van Doren can be reached on (571) 272-6737. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Romain Jeanty/
Primary Examiner, Art Unit 3623